## REMARKS

Applicant has carefully reviewed the Final Office Action mailed February 28, 2007 and offers the following remarks to accompany the above amendments.

Claim 17 was objected to because "a packet loss measurement tool" should be "the packet loss measurement tool." Applicant has amended claim 17 accordingly.

Applicant wishes to thank the Examiner for indicating that claims 7-9, 19, and 24 would be allowable if rewritten in independent form. Applicant reserves the right to rewrite claims 7-9, 19, and 24 at a later time.

Claims 1-6, 10-18, and 20-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,700,895 B1 to Kroll (hereinafter "Kroll") in view of U.S. Patent No. 6,975,629 B2 to Welin (hereinafter "Welin"). Applicant respectfully traverses. To establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested in the combination of references. MPEP § 2143.03. For the Patent Office to combine references in an obviousness rejection, the Patent Office must prove there is a suggestion to combine the references. For the Patent Office to prove that there is a suggestion to combine the references, the Patent Office must do two things. First, the Patent Office must state a motivation to combine the references, and second, the Patent Office must support the stated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). If the Patent Office cannot establish obviousness, the claims are allowable.

Applicant initially traverses the rejection because the Patent Office has not properly supported the proposed combination. The alleged motivation to combine the references is "to optimize the system in real time" (Final Office Action mailed February 28, 2007, p. 3). Applicant reiterates and incorporates its arguments on this issue as set forth in its previous response (See Response filed May 23, 2006, pp. 7-8). In particular, the alleged motivation is overly vague and broad and does not compel the combination; that is, one of ordinary skill in the art would not necessarily be compelled to look to Welin in order to optimize the system of Kroll in real time. There are other ways to optimize the system of Kroll in real time without looking to Welin. In fact, Kroll itself discloses real time adjustment of the size of a jitter buffer (see Kroll, Abstract), so there would be no need to look to Welin for real time optimization.

The Patent Office responds by acknowledging that Kroll teaches adjusting the size of the jitter buffer, but states that it would have been obvious to one of ordinary skill in the art to adjust

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both the size of the jitter buffer and the suitable CODEC because this would optimize the system even further in changing real-time condition (Final Office Action mailed February 28, 2007, p. 5). First, Applicant notes that the mere fact that references can be combined does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP § 2143.01. Applicant respectfully submits that the statement in Welin at col. 18, lines 20-25 about how adaptive scheduling adjusts to real-time conditions is not evidence that supports or suggests the desirability of combining the Welin and Kroll references to reach the claimed invention. In particular, adaptive scheduling and real-time conditions are not pertinent to the claimed method of voice optimization in a packet switched network, comprising: initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC, number of voice samples per packet, and jitter buffer size; measuring performance parameters of a network; and evaluating whether the measured performance parameters signify that a connection to the network is below a desired level of operation and, if so, adjusting the default parameters for the end-point devices based on the evaluating. This is especially true considering what Welin is cited for: initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC, and number of voice samples per packet. The adaptive scheduling adjusting itself for real-time conditions does not support combining Welin with Kroll for initializing default parameters for end-point devices. Since there is no actual evidence that supports the proposed motivation to combine, the motivation is improper. Since the motivation is improper, the combination is improper and should be withdrawn.

Even if the combination is proper, a point Applicant does not concede, the combination still does not teach each and every limitation of the claims. The Patent Office admits that Kroll does not teach initializing default parameters with respect to preferred CODEC and number of voice samples per packet, and cites Welin, col. 18, lines 4-14 to correct this deficiency of Kroll. As previously argued, the cited portion of Welin fails to teach or suggest initializing default parameters for end-point devices on a network with respect to choice of number of voice samples per packet. There is no mention in the cited passage of the choice of the number of voice samples per packet, particularly with respect to **initializing a default parameter** for an end-point with respect to the number of voice samples per packet.

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The Patent Office responds by stating that Welin teaches selection of coder and therefore selection of the frame size of the coder. The Patent Office then makes a leap to say that frame size is directly linked to the number of voice samples per packet, citing to page 7, lines 7-12 of Applicant's Specification, and therefore Welin teaches the choice of number of voice samples per packet (Final Office Action mailed February 28, 2007, p. 5). Welin does disclose selecting coders at run time. However, there is no mention of selection of the frame size of the coder in Welin, nor is there any mention of choosing the number of voice samples per packet. To the extent that the Patent Office is arguing that every coder has a specific frame size and that the selection of a particular coder therefore necessarily mandates the selection of the frame size, the Patent Office has offered no evidence to support such an argument.

In addition, even under such an argument, Welin still does not teach the claimed invention. A coder being selected at runtime is not equivalent to initializing a default parameter for endpoints with respect to choice of preferred CODEC. Claim 1 recites initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC, number of voice samples per packet, and jitter buffer size, and then evaluating whether the measured performance parameters signify that a connection to the network is below a desired level of operation and, if so, adjusting the default parameters for the end-point devices based on the evaluating. Welin does not disclose initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC, number of voice samples per packet, and jitter buffer size, and then evaluating whether the measured performance parameters signify that a connection to the network is below a desired level of operation and, if so, adjusting the default parameters for the end-point devices based on the evaluating. Welin simply discloses selecting coders at run time; Welin does not teach or suggest initializing default parameters for endpoints. Welin also does not teach or suggest the choice of the number of voice samples per packet and jitter buffer size. Finally, Welin does not disclose adjusting these same default parameters based on evaluating the measured performance parameters.

The Patent Office's cite to Applicant's Specification is also misplaced; in fact, Applicant's Specification shows that Welin does not teach the claimed invention. Applicant's Specification states that "a terminal proxy server uses a protocol to instruct the end-point device to use a CODEC of a particular type, a jitter buffer of a particular size, a frame size of so many voice samples, etc." (Specification, p. 7, lines 8-11). If the selection of a coder governed the

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selection of the frame size, and the frame size controlled the number of voice samples per packet, there would be no need for the terminal proxy server to instruct the end-point device to set the default settings for all three parameters, including the number of voice samples per packet. Under the interpretation proffered by the Patent Office, all that would be necessary would be the selection of the CODEC, and the number of voice samples would be set as well. Given that the Specification discusses the terminal proxy server instructing the end-point device to use a particular CODEC and a frame size of so many samples as separate events, and the claim language recites the choice of the three default parameters as separate events, it is clear that the selection of a CODEC does not automatically set the number of voice samples per packet. Thus, the Patent Office's argument is unfounded and is contrary to the present invention as described in the Specification. In summary, Welin does not disclose the choice of number of voice samples per packet. Since Welin does not disclose the element for which it is cited and the Examiner has admitted Kroll does not teach the element, the combination does not teach the recited element. Therefore, claim 1 is allowable over Kroll and Welin, even if properly combined.

Moreover, as discussed above, Welin fails to teach or suggest initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC. The cited passage of Welin does disclose the selection of coders suitably occurs at runtime. However, this is not equivalent to **initializing default parameters** for end-point devices on a network with respect to choice of **preferred CODEC** and then later adjusting the default parameters based on the evaluation of whether measured performance parameters signify a connection to the network is below a desired level of operation, as is required by claim 1.

The Patent Office responds to Applicant's arguments by stating that Welin teaches adapting the selection of coder at runtime and that the step of selecting the initial coder would be obvious (Final Office Action mailed February 28, 2007, p. 5). First of all, the Patent Office offers no support for the allegation that the selection of the initial coder would be obvious. In addition, the Patent Office seems to be misstating the teachings of Welin. Welin discloses the selection of coders occurring at runtime. Welin never mentions "adapting" the selection of coders at runtime, as alleged by the Patent Office. If the Patent Office is reading the selection of the coders at runtime as the claimed adjusting of the default parameters, the Patent Office is incorrectly reading Welin since Welin does not disclose adapting or adjusting the default

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parameters with respect to choice of preferred CODEC, number of voice samples per packet, and jitter buffer size. In addition, if the Patent Office is reading the selection of the coders at runtime as the claimed adjusting of the default parameters, then the Patent Office has failed to show a *prima facie* case of obviousness because Welin fails to teach or suggest "**initializing** default parameters for end-point devices on a network with respect to choice of preferred CODEC," as recited in claim 1. On the other hand, if the Patent Office is asserting that the selection of coders at runtime is equivalent to the claimed initialization of the default parameters with respect to the choice of preferred CODEC, then Welin fails to teach the claimed adjusting of the default parameters at a later time based on the evaluation of the measured performance parameters, as required by the present invention. Either way, the cited portion of Welin provides no teaching of initially selecting a coder and then changing or adapting the coder later based on the measured performance parameters. Thus, Welin does not teach or suggest "initializing default parameters for end-point devices on a network with respect to choice of preferred CODEC," and then "adjusting the default parameters for the end-point devices based on the evaluating" of the measured performance parameters, as recited by claim 1. Since Welin does not disclose the element for which it is cited and the Examiner has admitted Kroll does not teach the element, the combination does not teach the recited element. Therefore, claim 1 is allowable over Kroll and Welin, even if properly combined.
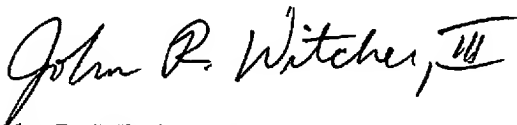
Claims 2-13 depend from claim 1 and are patentable for at least the same reasons set forth above with respect to claim 1.

Independent claims 14 and 20 include limitations that are the same or similar to those in claim 1 and are thus patentable for at least the same reasons set forth above with respect to claim 1. Claims 15-19 and 21-24 depend from claims 14 and 20, respectively, and are allowable over Kroll and Welin for at least the same reasons.

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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